

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:14CR50 ALM/CAN
	§	
MANUEL BUSTOS-HERNANDEZ	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on November 16, 2015 to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Tracey Batson.

On April 7, 2015, Defendant was sentenced by the Honorable Michael H. Schneider, United States District Judge, to a sentence of 12 months imprisonment followed by a 3-year term of supervised release for the offense of Alien in Possession of a Firearm. Defendant began his term of supervision on April 16, 2015. On October 14, 2015, this case was reassigned to the Honorable Amos L. Mazzant, United States District Judge.

On October 20, 2015, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 53). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall not unlawfully possess a controlled substance; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances,

except as prescribed by a physician; and (4) Immediately upon release of confinement, Defendant shall be surrendered to a duly authorized immigration official for deportation proceedings in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.* If ordered Deported, Defendant shall remain outside of the United States. In the event Defendant is not deported, or for any reason re-enters the country after having been deported, Defendant shall comply with all conditions of supervised release, to include reporting to the nearest U.S. Probation Office within 72 hours of their release by immigration officials or re-entry into the country.

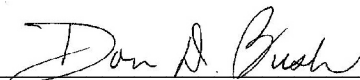
The Petition alleges that Defendant committed the following violations: (1) On September 17, 2015, Defendant was arrested by the Texas Parks & Wildlife State Parks Police Department in Pilot Point, TX, for the misdemeanor offenses of Possession of Marijuana less than 2 ounces, and Possession of Controlled Substance, Penalty Group 3. According to the arrest report, Defendant was a passenger in a vehicle which was stopped due to a defective headlamp. Upon a search of the vehicle, officers discovered a small amount of marijuana and two prescription pills, identified as Alprazolam, generic equivalent of Xanax. Neither Defendant nor the driver of the vehicle had a prescription for Alprazolam; and (2) Defendant was released from his term of imprisonment on April 16, 2015, and deported to Mexico on or about April 21, 2015. However, as evidenced by his arrest on September 17, 2015, he has failed to remain outside of the United States. As such, he had violated Title 8 U.S.C. § 1326 - Illegal Reentry of a Removed Alien.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the November 16, 2015 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of nine (9) months, with no supervised release to follow.

SIGNED this 12th day of December, 2015.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE